



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

January 17, 2006

The Honorable Carl R. Johnson, Chairman
Senate Environment and Wildlife Committee
Room 103; LOB
Concord, New Hampshire 03301

RE: SB 386 - Relative to Large Groundwater Withdrawals

Dear Senator Johnson:

Thank you for the opportunity to comment on SB 386. This bill would establish the impact criteria, most of which is now contained in administrative rules, that is the basis for establishing if a large groundwater withdrawal permit should be issued or rescinded by the New Hampshire Department of Environmental Services (DES). It also would clarify the area of concern for impacts associated with a large groundwater withdrawal and for municipal involvement in the permitting process. Finally, SB 386 would provide potentially affected municipalities with intervenor status and adds an appeal to superior court to the current appeal process for large groundwater withdrawal permitting. DES supports SB 386 with amendments as described below and also would like to provide the following information concerning this legislation.

In 1998, a law was passed which requires all large groundwater withdrawals to obtain a permit from the New Hampshire Department of Environmental Services to ensure that surrounding water resources and water users are protected from any impact the withdrawal could cause. In 2001, administrative rules Env-Ws 387 and 388 were adopted and since that time 11 large groundwater withdrawals have been permitted. Both the law and the rules were developed with significant input from stakeholders including water suppliers, commercial water users, environmental groups, the municipal association and others. It should be noted that New Hampshire's Large Groundwater Withdrawal Permitting Program is among the most comprehensive and stringent of any in the nation. Through this legislation and other activities, we continue to improve upon a program that is already of high quality and sophistication at the national level.

SB 386 clarifies the current groundwater permitting process by putting into statute a number of definitions and criteria that are now contained in administrative rules (Env-Ws 387 and Env-Ws 388). For instance, the impact criteria, now contained in the rules, which are the basis for establishing if a large groundwater withdrawal should be issued or rescinded, will now be in statute. The criteria were established with a large group of stakeholders and have been used in all the large groundwater withdrawal permits issued to date. By placing the criteria in statute, DES would be provided with clear legislative direction on what must be considered in order to preserve the public trust. In the proposed 485-C, V-c, in sections (a) through (k), the current language has been transferred verbatim, for the most part, from the rules. Sections (l) and (k) propose new criteria. DES requests consideration of the following changes to these new criteria:

(l): The current law and rule allow for a permit to be suspended, modified or revoked at any time that drought-related impacts occur, rather than just within 3 years of the permit approval date. There is no real basis for limiting this condition to 3 years so we recommend that this restriction be removed.

(m): This is a broad reference to public trust preservation without any real criteria for DES to apply. DES is concerned that this may be too broad and ambiguous therefore inviting confusion rather than providing clarity to the permitting process. Consequently, we recommend that this be deleted.

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As another important benefit, SB 386 will clarify the area around a large groundwater withdrawal that should be considered in determining impacts and involving municipalities. This is consistent with the current rules and ensures that all surrounding water resources and water users that are likely to be impacted by a large groundwater withdrawal will be protected. However, to make the intent more clear, we recommend that a definition of "watershed" be included as 485-C:2,IX-b to be consistent with existing DES rules and the proposed section 485-C:21,V-d. Proposed language is provided in Attachment I to this letter.

In summary, DES supports SB 386 with amendments and believes it will improve the current large groundwater withdrawal permitting process.

Thank you again for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Sarah Pillsbury at 271-1168 or me at 271-3449.

Sincerely,

Michael P. Nolin
Commissioner

cc: Senator Green
Senator Burling
Senator Estabrook
Senator Barnes

ATTACHMENT 1

DEPARTMENT OF ENVIRONMENTAL SERVICES LETTER OF TESTIMONY DATED JANUARY 17, 2006 ON SENATE BILL 386, RELATIVE TO LARGE GROUNDWATER WITHDRAWALS

PROPOSED DEFINITION OF "WATERSHED"

IX-b "Watershed" means:

a. For land upgradient of a proposed withdrawal, the maximum extent of the cone of depression created by the withdrawal with the assumption of a conceptual hydrologic model condition of 180 days of continuous pumping at maximum volumes without recharge from rainfall or snowmelt and the maximum extent of the recharge area for the withdrawal with the assumption of a conceptual hydrologic model condition of 180 days of continuous pumping at maximum volumes without recharge from rainfall or snowmelt; and

b. For land downgradient of a proposed withdrawal:

(1) The area where water taken by the withdrawal would flow if the withdrawal did not operate;

(2) The area that will provide water to the downgradient area when the withdrawal is operating; and

(3) The point where the amount of water to be withdrawn is negligible when compared to the amount of water crossing the boundary using one of the following methods:

a. An existing or new delineation of a watershed large enough so that the size of the watershed for the withdrawal is at least 10 times the size of the recharge area for the withdrawal;

b. An existing or new delineation of a watershed where the amount of water crossing the downgradient boundary, that is, leaving the watershed under current conditions, is at least 10 times the amount to be withdrawn; or

c. An alternative method of estimating a watershed provided it relies on conservative assumptions, is demonstrated as appropriate for the site by testing results, and is clearly explained and justified.